

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 2820 of 1992

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

=====

DEVJIBHAI B PARMAR - Petitioner(s)

Versus

CHIMANBHAI MANILAL PARMAR & 4 - Respondent(s)

=====

Appearance :

MR PM BHATT for Petitioner(s) : 1,

Petitioner : 2 DELETED,

None for Respondent(s) : 1, 5,

Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5 SERVED

MS MINI NAIR, AGP for Respondent(s) : 2, 3 and 4.

MR BK RAJ for Respondent(s) : 5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.5

=====

CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 23/07/2007

ORAL JUDGMENT

Though served, the respondents nos.1/1 to 1/5,
the legal representatives of the respondent no.1 have
not entered appearance.

This is a petition preferred against the order dated 21st/29th February, 1992 made by the State Government in Revision Application preferred by the petitioners.

It appears that the petitioners and the respondent no.1 were the brothers. The respondent no.1 had instituted Regular Civil Suit No.233/1988 in the Court of Civil Judge (S.D.), Vadodara for partition and for recovery of possession of his share. The said suit was compromised. Pursuant to the said compromise, a consent decree came to be passed on 22nd September, 1988. It appears that the said consent decree was not acted upon. The respondent no.1, therefore, took out execution application No.11/1989. Pending the said execution application, on application made by the present petitioners, the Mamlatdar, Vadodara, by his order dated 26th March, 1990 made pursuant to the said consent decree, directed the mutation entry to be made in the revenue record. Feeling aggrieved by the above referred order dated 26th March, 1990, the respondent no.1 preferred

appeal before the Deputy Collector, Vadodara. The Deputy Collector, Vadodara, by his order dated 25th January, 1991, allowed the appeal and set-aside the order of the Mamlatdar. According to the Deputy Collector, no mutation entry ought to have been made by the Mamlatdar pending the execution application. Feeling aggrieved, the petitioners preferred appeal before the District Collector, Vadodara. The District Collector, Vadodara, by his order dated 1st December, 1991, dismissed the appeal and confirmed the order of the Deputy Collector. The said order has been confirmed by the State Government by impugned order made on the revision application preferred by the petitioners.

Mr.Bhatt has submitted that though the respondent no.1 was served, he did not enter appearance. Pending this petition he has passed away. His legal representatives have been impleaded and are duly served. They too have not entered appearance. He has further submitted that the above referred execution application No.11/1989 has been dismissed in the year 2002 for non-prosecution. He has

submitted that the mutation entry was made in accordance with the consent decree passed by the Civil Court. The Deputy Collector was not justified in setting-aside the mutation entry made in accordance with the consent decree. In that view of the matter, the execution application taken out by the respondent no.1 having been dismissed, the order of the Mamlatdar be confirmed.

The respondent no.5 before this Court was the purchaser from the petitioner no.2. Pending this petition he has passed away, his heirs and legal representatives have been impleaded and are represented by the learned advocate Mr.Raj. Mr.Raj has supported the petition. Both the learned advocates have submitted that the consent decree has now been acted upon.

In view of the above statement made by Mr.Bhatt and Mr.Raj, the petition is allowed. The impugned order dated 21st/29th February, 1992 made by the State Government; the order dated 1st December, 1991 made by the Collector, Vadodara and the order dated 25th

January, 1991 made by the Deputy Collector, Vadodara are quashed and set-aside. The order dated 26th March, 1990 made by the Mamlatdar is restored.

Rule is made absolute in the above terms. The parties shall bear their own cost.

It is clarified that in case of difficulty, the respondents nos.1/1 to 1/5 shall have liberty to move this Court for revival of the petition and for appropriate orders. It is further clarified that this order shall not be binding or shall not abrogate the right, title and interest of a third party in the lands in question or any part of such lands.

(Ms. R.M.Doshit, J.)

/moin